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Michael C Stuart Cohen Pontani Lieberman & Pavane Suite 1210 551 Fifth Avenue New York, NY 10176			TUROCY, DAVID P	
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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/019,120
Filing Date: January 30, 2002
appellant(s): RANTANEN, RAUNO

MAILED
SEP 11 2007
GROUP 1700

Alfred W. Froebrich
For appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 6/11/2007 appealing from the Office action
mailed 8/2/2006.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

5790147	Hensel, John M.	8-1998
5405087	Waryu et al.	4-1995
5736195	Haaland, Peter D.	4-1998
6130682	Kohno et al.	10-2000
6063450	Bernert et al.	05-2000
4072772	Franz, Helmut	2-1978
3301699	Mozzi, Henry	1-1967
5789022	Kustermann et al.	8-1998
5219618	Daniels, Jos. V.F.	06-1993
5964952	Kunze-Concewtiz, Horst	10-1999
WO 96/10493	Kunze-Concetwitz, Horst	11-1996
5649867	Briggs	7-1997

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

1. Claims 20-21, 24-26, 29, 48-49, 52, 57, 58, 59, 60 are rejected under 35 U.S.C. 102(b) as being anticipated by US Patent 4901093 by Ruggiero et al., hereafter Ruggiero.

Ruggiero teaches a method of applying a treating agent onto a moving surface by feeding the agent into a chamber and then forming jets by directing the treating agent through the openings in a nozzle plate, wherein the entire peripheries of the

openings are defined by the plate (Figure 1, abstract). Riggiero discloses directing the jets toward the moving surface and moving the nozzle plate traversely relative to the direction of the moving surface (Figure 1, Column 3). When ejecting the coating near the edges of the moving surface, the nozzle plate will inherently be outside of the width of the moving surface, see figure 1 where the orifices are located in the center of the moving nozzle plate. Additionally, spray appears to be continuous for a small amount of time and therefore continuous does not require an infinite amount of time and therefore the jet of Ruggiero is continuous. The other issues are mere intended use of the apparatus and it is well settled that the intended use of a claimed apparatus is not germane to the issue of the patentability of the claimed structure. If the prior art structure is capable of performing the claimed use then it meets the claim. *In re Casey*, 152 USPQ 235, 238 (CCPA 1967); *In re Otto*, 136 USPQ 459 (CCPA 1963).

Claim 24: Riggiero discloses a screen plate (136).

Claims 48-49 and 52: Riggiero discloses controlling the amount of fluid applied to the moving surface by controlling the amount of fluid exiting the nozzle plate, which would inherently be a function of the volume flow (Column 5, lines 37-58).

2. Claim 83 is rejected under 35 U.S.C. 102(b) as being anticipated by US Patent 5649867 by Briggs.

Briggs teaches of an apparatus for spreading a treating agent (water) onto a moving surface (people) (Abstract). Briggs discloses atleast one feeding chamber and

a nozzle plate (107), including openings and having a length greater than a width of the moving surface (Figure 1). Briggs teaches the opening comprise a periphery defined entirely by the nozzle plate and forming said jets of the treating agent by the opening for directing the treating agent toward the moving surfaces (Figures). Briggs discloses providing actuators connected to the nozzle plate to allow for movement (Column 7, lines 40-47). The other issues are mere intended use of the apparatus and it is well settled that the intended use of a claimed apparatus is not germane to the issue of the patentability of the claimed structure. If the prior art structure is capable of performing the claimed use then it meets the claim. *In re Casey*, 152 USPQ 235, 238 (CCPA 1967); *In re Otto*, 136 USPQ 459 (CCPA 1963).

3. *Claims 20-22, 24, 48-50, 52, 57-58, and 76-77 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent 5789022 by Kustermann et al (“Kustermann”) in view of US Patent 4072772 by Franz and further in view of US Patent 6063450 by Bernert et al. (“Bernert”).*

Kustermann discloses utilizing a pressurized jet to apply treating agent onto a moving surface (Figure 1, Column 3, lines 11-15). Kustermann discloses that it is known in the art to apply treating agent directly onto the fiber web as it moves along a path of travel (Column 1, lines 20-25). Kustermann also discloses a method of applying a treatment agent onto a roll to transfer the agent onto a moving web (Column 2, lines 60-65, Column 3, lines 13-15). Kustermann also discloses controlling the amount of

treating agent fed onto the moving surface as a function of the volume flow of the treating agent (Column 3, lines 17-25).

However, Kustermann fails to teach sending the treatment agent into a feeding chamber, through a screen plate and then forming jets through openings defined by the peripheries of a nozzle plate.

However, Franz discloses a method for applying a coating onto a moving surface where the treatment agent is fed into a feeding chamber through a screen plate and then continuous jets, formed by directing the treating agent through openings in the nozzle plate, the openings in the nozzle plate where the jets are formed are defined solely by the nozzle plate, are directed towards the moving surface (Figure 8, 14, Abstract). In other words Franz teaches forming a jet using a pipe, by directing the treating agent through an opening of the nozzle plate, wherein the opening is solely defined by the nozzle plate.

Therefore, it would have been obvious to one skilled in the art at the time of the invention to modify Kustermann to use the pressurized spray nozzle suggested by Franz to provide a desirable application of a treatment agent because Kustermann teaches applying a treating agent through a pressurized jet onto a surface moving along a path and Franz teaches a known pressurized jet using openings in a nozzle plate to apply a treating agent onto a moving surface.

Kustermann in view of Franz teaches of applying the coating material as a free jet, but fails to disclose directing each jet such that each of the jets remains separated from each other in the space between the nozzle plate and the moving surface.

However, Bernert teaching of a coating a moving substrate using a free jet method, discloses using a free jet where the spray patterns overlap between adjacent nozzles or in the alternative the adjacent spray nozzles do not overlap, but rather the overlapping portion of the coating only overlap in two consecutive coating cycles, i.e. two consecutive nozzle plates (Column 2, lines 30-48). Bernert discloses that it is within the skill of one ordinary in the art at the time of the invention to determine the amount of overlap, depending on the desired coating properties, between two adjacent nozzles in the nozzle array. Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to modify Kustermann in view of Franz to produce a free jet without overlapping of adjacent nozzles with the expectation of producing a coating with the desired properties.

Claims 76-77: Kustermann, Franz, and Bernert fails to explicitly teach of providing a nozzle plate with a thickness within the range of 0.1 to 0.5 mm, however, Franz teaches of recessing the tub (278) from the edge of the nozzle plate about 0.003 inches, or about 0.075 millimeters (Column 11, lines 22-35). As shown in figure 9, tub (278) is recessed about half the thickness of the nozzle plate, therefore Figure 9 reasonably suggests to one of ordinary skill in the art to select a nozzle plate thickness

of approximately 2 times the desired thickness or about 0.15 millimeters, which is within the range as claimed.

4. *Claims 23 and 51 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kustermann in view of Franz and Bernert as applied to claim 20 above and taken further in view of US Patent 3301699 by H.J. Mozzi ("Mozzi").*

Kustermann, Franz, and Bernert are applied here for the same reasons set forth in the 35 USC 103(a) rejection above. Kustermann discloses aiming the nozzles onto the surface of the applicator roll or under certain circumstances aiming the nozzles directly onto the surface of the web, while preferably the nozzles are aimed at the application roll near the roll nip (Column 5, lines 1-10). Such a disclosure shows that it is within the skill of one of ordinary skill in the art to determine the direction to aim the nozzles depending on the circumstances. However, Kustermann, Franz, and Bernert do not teach applying a portion of the treating agent directly onto the surface of the web and a portion of the treatment agent directly onto the surface, which contacts the web in the roll nip.

Mozzi, teaching of application of a teaching agent onto a moving web, discloses aiming the pressurized spray nozzles so that a portion of the treating agent contacts the web and a portion of the treating agent contacts the surface of the roll (Column 2, lines 45-56, Figure 2).

Therefore, it would have been obvious to one skilled in the art at the time of the invention to modify Kustermann, Franz, and Bernert to aim the spray nozzles as suggested by Mozzi to provide a desirable coating of a continuously moving surface because Kustermann, Franz, and Bernert teach that it is within the skill of one ordinary in the art to determine the direction to aim the nozzle and Mozzi teaches that it is known in the art to aim the nozzles so that a portion of the spray pattern contacts both the web and the transfer roll.

5. *Claims 36-38, 40, 55 and 64-65 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kustermann in view of Franz and Bernert and taken further in view of US Patent 5405087 by Waryu et al. ("Waryu").*

Kustermann in view of Franz and Bernert teaches all the limitations of these claims as discussed in the 35 USC 103(a) rejection above, except they fail to teach cleaning the nozzle plate utilizing a needle-shaped water jet.

However, Waryu, teaching of applying a coating through a pressurized jet, discloses cleaning the opening in the nozzle by directing a needle-shaped water jet at the nozzle (Figure 1, Column 4, lines 21 – 37). Waryu discloses that such a cleaning jet will wash off and prevent any accumulating of the spray material on the nozzle (Column 5, lines 57-51).

Therefore, it would have been obvious to one skilled in the art at the time of the invention to modify Kustermann in view of Franz and Bernert to clean the openings of

the nozzle with a water jet suggested by Waryu to provide a desirable prevention of accumulation of coating material on a nozzle because Kustermann in view of Franz and Bernert teaches coating a substrate through a nozzle and Waryu teaches that when coating a substrate using a nozzle it is advantageous to provide a cleaning water jet to wash off and prevent accumulation of coating material on the nozzle.

6. *Claims 30-32, 34, 54, and 61-62 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kustermann in view of Franz, Bernert, and Waryu taken further in view of US Patent 5219618 by Daniels ("Daniels").*

Kustermann in view of Franz, Bernert, and Waryu teaches all the limitations of these claims as discussed in the 103(a) rejection above, except they fail to teach cleaning the nozzle plate by blasting steam against the nozzle plate.

However, Daniels, teaching of a coating a moving web, discloses preventing the build-up of coating material on doctor blade using steam, water, a mixture of steam and water, or any material that does not affect the process (Column 2, lines 50-58). While it is noted that Daniels provides a cleaning jet onto a doctor blade, Daniels is utilized here to show that it is known in the art to blast steam, water, or any material appropriate for the process, at a surface to provide desired cleaning.

Therefore, it would have been obvious to one skilled in the art at the time of the invention to modify Kustermann in view of Franz, Bernert, and Waryu to use the steam cleaning suggested by Daniels to provide a desirable cleaning of the nozzle because

Kustermann in view of Franz, Bernert, and Waryu teaches using a water jet to prevent accumulation of coating material on the nozzle and Daniels teaches steam is a known substitute to water to wash off and/or prevent any undesirable coating material on a surface.

7. *Claims 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kustermann in view of Franz, Bernert, Mozzi and Waryu taken further in view of US Patent 5219618 by Daniels (“Daniels”).*

Kustermann, Franz, Bernert, Mozzi and Waryu, and Daniels are applied here as applied here for the same reasons as give above in the 35 USC 103(a) rejection.

8. *Claim 39 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kustermann in view of Franz, Bernert, and Mozzi and taken further in view of US Patent 5405087 by Waryu et al. (“Waryu”).*

Kustermann, Franz, Bernert, Mozzi, and Waryu are applied here as applied here for the same reasons as give above in the 35 USC 103(a) rejection.

9. *Claims 42-44, 46, and 56 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kustermann in view of Franz, Bernert and Waryu taken further in view of WO96/10463 by Kunze-Concewitz (“Kunze-Concewitz”).*

*** Please note: US Patent 5964952 by Kunze-Concewitz is utilized here as a fair translation of WO96/10463 by Kunze-Concewitz ***

Kustermann in view of Franz, Bernert and Waryu teaches all the limitations of these claims as discussed in the 103(a) rejection above, except they fail to teach cleaning the nozzle plate with ultrasound.

However, Kunze-Concewitz, teaching of a method of cleaning a surface with water, discloses conventional cleaning methods include ultrasound and spraying water at high pressure from a nozzle (Column 1, lines 10-17). While it is noted that Kunze-Concewitz teaches a method of cleaning a surface, Kunze-Concewitz is utilized here to show that it is known in the art to clean a surface using any number of conventional cleaning methods including ultrasound and high-pressure water.

Therefore, it would have been obvious to one skilled in the art at the time of the invention to modify Kustermann in view of Franz, Bernert and Waryu to use the ultrasound cleaning method as suggested by Kunze-Concewitz to provide a desirable nozzle cleaning because Kustermann in view of Franz, Bernert and Waryu teaches cleaning a nozzle with a high pressure water jet and Kunze-Concewitz teaches ultrasound cleaning is a known substitute to high pressure water jet to clean a surface. Please note that the test of obviousness is not an express suggestion of the claimed invention in any or all references, but rather what the references taken collectively

would suggest to those of ordinary skill in the art presumed to be familiar with them (*In re Rosselet*, 146 USPQ 183).

10. *Claim 45 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kustermann in view of Franz, Bernert, and Mozzi and taken further in view of WO96/10463 by Kunze-Concewitz ("Kunze-Concewitz").*

Kustermann, Franz, Bernert, Mozzi, and Kunze-Concewitz are applied here as applied here for the same reasons as give above in the 35 USC 103(a) rejection.

11. *Claims 78, 82 and 83 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent 4901093 by Ruggiero et al., hereafter Ruggiero in view of US Patent 5736195 by Haaland, hereafter Haaland..*

Ruggiero teaches a method of applying a treating agent onto a moving surface by feeding the agent into a chamber and then forming jets by directing the treating agent through the openings in a nozzle plate, wherein the entire peripheries of the openings are defined by the plate (Figure 1, abstract). Riggiero discloses directing the jets toward the moving surface and moving the nozzle plate traversely relative to the direction of the moving surface (Figure 1, Column 3). When ejecting the coating near the edges of the moving surface, the nozzle plate will inherently be outside of the width of the moving surface, see figure 1 where the orifices are located in the center of the moving nozzle plate.

Haaland discloses, a similar nozzle plate, forming the droplets using the nozzle plate on a substrate discloses that it is known in the art to provide a fluid reservoir (14) or a fluid pipe (15) to store the fluid ejected from a nozzle at an external location and provides passage to the nozzle for spraying (figures). The selection of something based on its known suitability for its intended use has been held to support a *prima facie* case of obviousness. *Sinclair & Carroll Co. v. Interchemical Corp.*, 325 U.S. 327, 65 USPQ 297 (1945).

Alternatively, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify Ruggiero to include a fluid reservoir to store the fluid distant from the nozzle with a reasonable expectation of success because Haaland discloses when spraying liquid through a nozzle plate it is advantageous to have the liquid in a tank. The prior art can be modified or combined to reject claims as *prima facie* obvious as long as there is a reasonable expectation of success. *In re Merck & Co., Inc.*, 800 F.2d 1091, 231 USPQ 375.

Claim 82: Ruggiero discloses controlling the amount of fluid applied to the moving surface by controlling the amount of fluid exiting the nozzle plate, which would inherently be a function of the volume flow (Column 5, lines 37-58).

12. *Claim 79 and 84 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ruggiero in view of Haaland and further in view of US Patent 5790147 by Hensel, hereafter Hensel.*

Ruggiero in view of Haaland teaches all the limitations of these claims as discussed above, however, the reference fails to teach of providing steam to clean the nozzle plate.

However, Hensel, teaching of a similar ink jet printer, discloses directing steam at a nozzle plate with a plurality orifices in order to clean the openings from clogging (abstract, column 1, lines 55-65). Hensel discloses the steam provides the advantage of softening the sediments clogged in the nozzle plate and provide better cleaning (Column 2, lines 49-56).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify Ruggiero in view of Haaland to use the steam cleaning as suggested by Hensel with a reasonable expectation of success to reap the benefits of easily removing sediments from the nozzle orifices.

13. *Claim 80 and 85 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ruggiero in view of Haaland and further in view of US Patent 5405087 by Waryu et al. ("Waryu").*

Ruggiero in view of Haaland teaches all the limitations of these claims as discussed above, except they fail to teach cleaning the nozzle plate utilizing a needle-shaped water jet.

However, Waryu, teaching of applying a coating through a pressurized jet, discloses cleaning the opening in the nozzle by directing a needle-shaped water jet at the nozzle (Figure 1, Column 4, lines 21 – 37). Waryu discloses that such a cleaning jet

will wash off and prevent any accumulating of the spray material on the nozzle (Column 5, lines 57-51).

Therefore, it would have been obvious to one skilled in the art at the time of the invention to modify Ruggiero in view of Haaland to clean the openings of the nozzle with a water jet suggested by Waryu to provide a desirable prevention of accumulation of coating material on a nozzle because Ruggiero in view of Haaland teaches coating a substrate through an orifice and Waryu teaches that when coating a substrate using a nozzle it is advantageous to provide a cleaning water jet to wash off and prevent accumulation of coating material on the nozzle.

14. *Claim 81 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ruggiero in view of Haaland and Waryu taken further in view of WO96/10463 by Kunze-Concewitz (“Kunze-Concewitz”).*

*** Please note US Patent 5964952 by Kunze-Concewitz is the patent, which issued from the national stage application based on WO96/10463. This patent is being used as an English translation of WO WO96/10463, therefore all references to column and line number are found in 5964952 ***

Ruggiero in view of Haaland and Waryu teaches all the limitations of these claims as discussed in the 103(a) rejection above, except they fail to teach cleaning the nozzle plate with ultrasound.

However, Kunze-Concewitz, teaching of a method of cleaning a surface with water, discloses conventional cleaning methods include ultrasound and spraying water at high pressure from a nozzle (Column 1, lines 10-17). While it is noted that Kunze-Concewitz teaches a method of cleaning a surface, Kunze-Concewitz is utilized here to show that it is known in the art to clean a surface using any number of conventional cleaning methods including ultrasound and high-pressure water.

Therefore, it would have been obvious to one skilled in the art at the time of the invention to modify Ruggiero in view of Haaland and Waryu to use the ultrasound cleaning method as suggested by Kunze-Concewitz to provide a desirable nozzle cleaning because Ruggiero in view of Haaland and Waryu teaches cleaning a nozzle with a high pressure water jet and Kunze-Concewitz teaches ultrasound cleaning is a known substitute to high pressure water jet to clean a surface. Please note that the test of obviousness is not an express suggestion of the claimed invention in any or all references, but rather what the references taken collectively would suggest to those of ordinary skill in the art presumed to be familiar with them (*In re Rosselet*, 146 USPQ 183).

(10) Response to Argument

1

Claim 20 and rejected dependants: The appellant argue against the Ruggiero reference, stating the reference forms drops and drops can not be considered jets. The examiner disagrees. Since the appellant has not explicitly stated a definition for the term "jet" the examiner is giving the term the broadest reasonable interpretation.

Ruggiero is teaching of an ink “jet” method, where in each droplet of ink is ejected from the nozzle plate (Column 1, lines 15-20). Ruggerio is teaching individual drop being ejected from the nozzle plate and therefore each droplet is continuously jetted from the nozzle plate, in the form of a “jet”, for a small amount of time. Since the claims include comprising language and the original disclose fails to define the metes and bounds of the term “continuous jet”, it is the examiners position that a broad and reasonable interpretation of “continuous jet” includes a “jet” for a finite period of time as required by the claim.

Claim 57 and rejected dependents: The appellant argues against the Ruggiero reference, stating that the reference fails to teach forming openings in which continuous jets are formed. The examiner disagrees and notes the claim is an apparatus claim and such a limitation is merely intended use of a design. The openings as taught by Ruggiero are small and therefore are capable of forming continuous jets. The prior art only has to provide a structure that is capable of performing in the manner claimed and not necessarily have ever been intended to be used in this manner. It is well settled that the intended use of a claimed apparatus is not germane to the issue of the patentability of the claimed structure. If the prior art structure is capable of performing the claimed use then it meets the claim. *In re Casey*, 152 USPQ 235, 238 (CCPA 1967); *In re Otto*, 136 USPQ 459 (CCPA 1963). If the appellant were to establish that significant structural differences exist with the prior art apparatus which would make it incapable of forming jets and amend the claims appropriately, the art rejection over the apparatus claims will be withdrawn.

2

The appellant argues against the Briggs reference stating the reference discloses the front plate of the showerhead is fixed and therefore there is no actuator for moving the front plate relative to the rest of the showerhead. While the examiner does not disagree, the claim as written requires a feeding chamber for receiving treating fluid (in the case of Brigg, the pipe leading to the showerhead) a means for directing treating agent from the feeding chamber (shower head) and an actuator coupled to the nozzle

plate (i.e. the swivel ball coupled to the front plate via the showerhead). Therefore the nozzle plate moves relative to the pipe leading to the showerhead.

The appellants appear to be narrowly interpreting the claim, the claims fail to require and relationship between the feeding chamber and the nozzle plate and the fact that in Briggs there exists an additional chamber between the pipe leading to the showerhead and the nozzle plate of the showerhead is moot because the claim does not exclude such an arrangement. The pipe leading to the showerhead, prior to the swivel ball, can reasonably be considered an "feeding chamber" and therefore the nozzle plate (as well as the entire showerhead) can be moved relative to the feeding chamber using the actuator.

The appellants argue that Briggs discloses only a user moving the showerhead and therefore does not disclose an actuator operatively coupled to the nozzle plate. However, the examiner disagrees and argues that the appellant appears to be narrowly interpreting the claim. The swivel ball as discussed above is operatively connected to the nozzle plate through the showerhead and whether a user or a control system moves the nozzle plate is moot in regards to the claims as written.

3

The appellants argue against the Franz reference stating an atomized fluid is not a continuous jet as required by the claim. However, the applicant has failed to provide any factual evidence which establishes the facts as alleged and therefore such a statement must be deemed mere attorney speculation.

Additionally, it is unclear what the appellants define as "continuous jet" and the examiner cannot ascertain an explicit definition from the appellant's disclosure or that known in the art. Therefore, giving such a term its broadest reasonable interpretation, the examiner maintains that atomized fluid can read on "continuous jets of treating fluid" absent a showing of fact to the contrary.

The appellants argue that the pipe 278 partially forms the jet and therefore the openings do not form the jet. However, the claim does not require the jets to be formed by the openings, only that the "openings in which the jets are formed". The jets are formed in the openings defined by the nozzle plate as taught by Franz and therefore read on the claim as written.

In response to appellant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

4-10

The appellant has not provided any arguments with respect to the claims rejection under these heading and the examiner maintains these claims are rejected for the reasons set forth above.

11

In response to appellant's arguments against the Ruggiero and Haaland references individually, one cannot show nonobviousness by attacking references

individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). Ruggiero teaches of a moving nozzle plate and Halaand teaches forming the droplets using the similar nozzle plate on a substrate discloses that it is known in the art to provide a fluid reservoir (14) or a fluid pipe (15) to store the fluid ejected from a nozzle at an external location and provides passage to the nozzle for spraying (figures). The selection of something based on its known suitability for its intended use has been held to support a *prima facie* case of obviousness. *Sinclair & Carroll Co. v. Interchemical Corp.*, 325 U.S. 327, 65 USPQ 297 (1945).

Alternatively, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify Ruggiero to include a fluid reservoir to store the fluid distant from the nozzle with a reasonable expectation of success because Haaland discloses when spraying liquid through a nozzle plate it is advantageous to have the liquid in a tank. The prior art can be modified or combined to reject claims as *prima facie* obvious as long as there is a reasonable expectation of success. *In re Merck & Co., Inc.*, 800 F.2d 1091, 231 USPQ 375.

The applicant argues that Ruggiero fails to disclose moving the paper an the print head simultaneous, however, the examiner notes that claim 78 fails to require such a limitation and claim 83 is an apparatus claim and it is well settled that the intended use of a claimed apparatus is not germane to the issue of the patentability of the claimed structure. If the prior art structure is capable of performing the claimed use then it meets the claim. *In re Casey*, 152 USPQ 235, 238 (CCPA 1967); *In re Otto*, 136 USPQ

459 (CCPA 1963). If the appellant were to establish that significant structural differences exist with the prior art apparatus which would make it incapable of forming jets and amend the claims appropriately, the art rejection over the apparatus claims will be withdrawn.

12-14

The appellant has not provided any arguments with respect to the claims rejection under these heading and the examiner maintains these claims are rejected for the reasons set forth above.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/David Turocy/

Patent Examiner

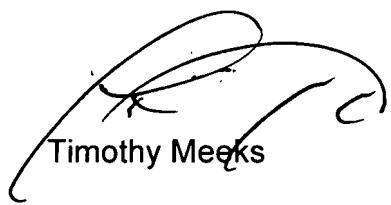
AU 1762

Conferees:

/Jennifer Michener/

Quality Assurance Specialist, TC1700

Jennifer Michener



A handwritten signature in black ink, appearing to read "Timothy Meeks". The signature is fluid and cursive, with a large, sweeping flourish on the left side.

Timothy Meeks